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MEMORANDUM

April 18, 2006

TO: Gail Gonzalez
Sarah Friedmann

FROM: Legislative Council Staff and Office of Legislative Legal Services

SUBJECT: Proposed initiative measure 2005-2006 #104, concerning the Colorado minimum wage

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment appear to be:

1. To raise the minimum wage rate in Colorado to \$6.85 per hour for employees who receive the state or federal minimum wage.
2. To adjust the minimum wage rate annually for inflation.
3. To establish that no more than \$3.00 per hour in tip income may be used to offset the minimum wage of employees who regularly receive tips.

4. To prohibit legislative amendment of the minimum wage rate provisions by placing them in the Colorado Constitution.

Comments and Questions

The form and substance of the proposed initiative raise the following comments and questions:

1. Section 1 (4) of Article V of the Colorado Constitution provides that an initiated measure shall take effect "from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed.". Often, the governor's proclamation does not occur until late January following a November election. The proposed initiative would change the minimum wage "[e]ffective January 1, 2007." Would the proponents consider specifying a later effective date to avoid any potential retroactivity problems?
2. Minimum wage laws and regulations at the federal and state level govern several issues related to the minimum wage besides the actual wage rate. Such provisions relate to:
 - Which employees and industries are covered by the minimum wage;
 - The minimum wage for minors;
 - How compensation in the form of tips, lodging, and meals can be used to qualify as part of the minimum hourly wage paid to employees;
 - Overtime pay rates; and
 - Employer penalties for not complying with the minimum wage.For example, existing federal and state provisions define a "tipped employee" as any employee who customarily and regularly receives more than \$30 a month in tips, and state that employees who work over a certain number of hours for "overtime" be paid time and one-half of the regular rate of pay.
 - a. Is it the proponents' intent that the initiative set the minimum wage rate only, and defer to existing federal and state regulations regarding the other provisions relating to the minimum wage?
 - b. If so, would the proponents consider adding language to specify that the federal "Fair Labor Standards Act of 1938" (FLSA), as amended, and any state and federal regulations adopted under the authority of the FLSA, shall govern these issues?
 - c. If not, could the proponents specify which of the provisions listed above are intended to differ from the FLSA and existing regulations, and in what way?
3. Federal and state provisions state that if an employee's tips combined with the employer's cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference in wages. Is it the intent of the proponents that the employer must make up the difference if tipped employees do not receive the minimum wage of \$6.85 per hour proposed in the initiative?

4. Is it the proponents' intent to allow an adjustment in the minimum wage for seasonal or recreational workers?
5. Given the difficulty of amending the state constitution to address changing circumstances, would the proponents consider an alternative approach so that the minimum wage could more easily be changed if economic conditions warrant? For example, the minimum wage could be set in state statute, or the initiative could index the state minimum wage to a certain amount above the federal minimum wage. Alternatively, the initiative could provide that the General Assembly may change the minimum wage, subject to specific limitations.
6. Could the proponents please explain why the figure of \$6.85 was chosen as the state minimum wage? Is this the minimum wage used in other states? Is the \$6.85 figure based on an economic model or formula?
7. The proposal refers to a "Consumer Price Index used for Colorado". This is a nonstandard term. There is a standard reference published by the United States Department of Commerce, Bureau of Labor Statistics, which is officially titled the "Consumer Price Index for Denver-Boulder, all items, all urban consumers." Is this the index to which reference should be made? If so, would the proponents consider changing the initiative so that it refers to the Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index"?
8. Should the \$3.00 per hour for tip income also be adjusted for inflation?